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OFFICE OF PETITIONS

In re Application of :
Cole et al. :
Application No. 10/063,319 : ON PETITION
Filed: 10 April, 2002 :
Attorney Docket No. ADL :

This is a decision on the renewed petition under 37 CFR 1.137(b),¹ filed on 16 December, 2004.

The petition is granted.

This application became abandoned on 23 June, 2002, for failure to timely submit an oath or declaration, a surcharge for its late filing, and substitute drawings in compliance with 37 CFR 1.84,

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

as required by the Notice to File Missing Parts of Nonprovisional Application mailed on 22 April, 2002, which set a two (2) month shortened period for reply. Notice of Abandonment was mailed on 4 December, 2003. The petition filed on 16 August, 2004, was dismissed on 13 October, 2004.

Petitioner has now filed the substitute drawings required by the Notice mailed on 22 April, 2002, accompanied by a one (1) month extension of time.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.² In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that petitioner herein was ever empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be mailed. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

The application is being referred to the Office of Initial Patent Examination for further processing.

²See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1208 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in cursive script, appearing to read "D. Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

cc: Faegre & Benson LLP
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